



INTERIOR BOARD OF INDIAN APPEALS

Mildred Simon v. Sacramento Area Director, Bureau of Indian Affairs

29 IBIA 59 (02/05/1996)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

MILDRED SIMON,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 96-43-A
SACRAMENTO AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	February 5, 1996

On January 29, 1996, the Board of Indian Appeals received a document titled "Motion for Leave to Re-file Notice of Appeal" from Mildred Simon, through counsel, James E. Townsend, Esq., Minneapolis, Minnesota. The motion indicates that Simon is seeking review of an October 16, 1995, decision issued by the Sacramento Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning a Secretarial election for the Middletown Rancheria.

Simon states that she received the Area Director's decision on October 18, 1995, and that, on November 14, 1995, she filed a notice of appeal with the Assistant Secretary - Indian Affairs and served copies on interested parties. She furnishes copies of certified mail return-receipts for the copies of her notice of appeal sent to the Assistant Secretary, the Area Director, and the Rancheria, all showing receipt in November 1995.

Simon does not allege that she filed a timely notice of appeal with the Board but contends that no party will be prejudiced if the Board accepts her appeal at this time.

The appeal is docketed under the above case name and number, which should be cited in all future correspondence or inquiries regarding the matter. The Board finds, however, that the circumstances of this case require that the appeal be dismissed.

The Area Director's decision stated:

This decision may be appealed to the Interior Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340. Your notice of appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. * * * You must send copies of your notice of appeal to (1) the Assistant Secretary - Indian Affairs, * * * (2) each interested party known to you, and (3) this office. Your notice of appeal sent to the Board of Indian Appeals must certify that you have sent copies to these parties. * * *

If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal. [Emphasis in original.]

Appellant has failed to file a timely notice of appeal. The Area Director's decision clearly informed her that her notice of appeal was to be filed with the Board and provided the Board's address. Appellant did not follow the Area Director's instructions but, instead, filed her notice of appeal with the Assistant Secretary - Indian Affairs. The Board has consistently held that a notice of appeal is not timely when the appellant has been given the correct appeal information but files his/her notice of appeal with an official other than the Board, resulting in receipt of the notice of appeal by the Board outside of the time period specified in the regulations. E.g., After Buffalo v. Acting Billings Area Director, 28 IBIA 131, recon. denied, 28 IBIA 159 (1995); Blanchard v. Sacramento Area Director, 27 IBIA 134 (1995).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is dismissed as not being timely filed.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge